IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.A. No. 282 of 2000

Date of Decision: 20.7.2007

State of H.P. … Petitioner

Versus

Kamal Kumar & anr. … Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.
The Hon'ble Mr

Whether approved for reporting?

For the Petitioner(s) : Mr. J.S. Guleria, Law Officer.

For the Respondent(s) : M/s Bhuvnesh Sharma & Ramakant Sharma, Advocates.

Deepak Gupta, **J** (Oral).

This appeal by the State is directed against the judgment of the Additional Chief Judicial Magistrate, Dehra in Criminal Case No. 3-III/93 decided on 29.10.1999 whereby the trial Court has acquitted the accused for having committed an offence under Section 7 and 10 of the H.P. Prevention of Mal-practices at Universities/Boards and other specified Examination Act, 1984.

The prosecution case in brief is that one Ashwani Kumar was having Roll No.125569 and was to appear in the Middle Standard Examination. According to the prosecution, Ashwani Kumar himself did not appear and one Kamal Kumar appeared on his behalf. The

first examination for the middle standard took place on 10.3.1992. The person appearing was asked to produce the admission slip. When the same was produced, it was found that it did not have the photograph of the candidate. However, the Superintendent permitted him to sit in the examination. He was again permitted to appear in the examination which took place on 14.3.1992 but was warned to bring the admission slip with photograph on 16.3.1992. On 16.3.1992 the admission slip was again not produced. On the said date, the Deputy Superintendent (Examination) confronted the person so appearing and he stated that his name is Kamal Kumar and not Ashwani Kumar and he was impersonating as Ashwani Kumar. On this basis, the complaint was filed. After investigatioin, the challan was prepared and filed against both the accused-respondents for having committed the offence of mal-practices in the examination. The prosecution led evidence and the learned trial Court has acquitted both the accused on perusal of the entire record. No fault can be found with the reasoning of the trial Court.

There were only three material witnesses. PW1 Dilbagh Singh was the Superintendent of the Middle Standard Examination conducted at the Senior Secondary School, Khundian during the month of March, 1992. PW2 Devinder Kumar was the Supervisor in the Examination Hall and PW6 Mohinder Singh was the Deputy Superintendent in the examination.

According to these three witnesses, on 16.3.1992 when a person who was appearing in the examination was asked to produce the photograph, he could not do so and confessed that he was Kamal Kumar and not Ashwani Kumar. It is the case of the

prosecution that this very person had appeared in the two examinations which were conducted on 10th and 14th March, 1992. However, the prosecution for the reasons best known to it did not produce the answer sheets of the said dates nor it tried to get the handwriting of those papers compared with the handwriting of either of the accused. There is no explanation from the Deputy Superintendent as to why he permitted a person who did not have a valid admission slip to appear in the examination on the previous dates. It is also the admitted case of the prosecution that the examination Superintendent is supposed to have in his possession the duplicate roll number slips of the candidates with their photographs. No doubt, PW1 stated that the duplicate roll number slip of the candidate did not have his photograph on it but this fact cannot be believed in view of the fact that even duplicate roll number slip has not been produced and proved on record. It is also admitted by the three witnesses that from 10th to 16th March 1992, no complaint was made to the Board or to any other person in this regard. All the circumstances have weighed with the learned trial Court while acquitting both the accused.

Keeping in view the aforesaid discussion, I am of the opinion that there is no merit in this appeal which is accordingly dismissed. Bail bonds furnished by the respondents-accused are discharged.

July 20, 2007. (Deepak Gupta),J.

s.